IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-10215-2023
Reserved on: 01.04.2024
Pronounced on: 05.04.2024
2024:PHHC: 046768

JASBIR SINGH RYAIT

. . . . Petitioner

Vs.

ASSISTANT COMMISSIONER OF INCOME TAX

. . . . Respondent

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CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

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Present: - Mr. Kanwaljit Singh, Sr. Advocate, with
Mr. Navyugeet Brar, Advocate, for the petitioner.

None for the respondent.

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DEEPAK GUPTA, J.

By way of this petition filed under Section 482 CrPC, petitioner prays for quashing of complaint No.COMA/736/2017 *(Annexure P4)* titled as "*Assistant Commissioner of Income Tax Vs. Jasbir Singh Ryait"*, pending in the Court of ld. Chief Judicial Magistrate, Ludhiana, under Section 276CC of Income Tax Act, 1961 *[hereinafter referred to as 'the Act'],* besides summoning order dated 27.02.2017 *(Annexure P5);* order dated 15.12.2022 *(Annexure P6)* framing charges against the petitioner and all the consequential proceedings arising therefrom, as the matter has already been settled by the Settlement Commission, Income Tax Department vide order dated 21.06.2018 *(Annexure P7).*

2. Ld. counsel contends that pursuant to a search under Section 132 of the Act, conducted in the premises of the petitioner, notice under Section 153-A of the Act was issued requiring the petitioner-assessee to file the return within 10 days of the receipt of the notice dated 11.04.2016 *(Annexure P1).*

Petitioners sought time to enable him to file the return. However, another notice dated 26.05.2016 *(Annexure P2)* was sent to the petitioner as to why the prosecution under Section 276CC of the Act be not launched against him. Petitioner submitted reply dated 3.6.2016 *(Annexure P3)* giving detailed reasons. However, without considering the said reply, the respondent filed impugned complaint dated 18.01.2017 *(Annexure P4)* under Section 276CC of the Act.

3.1 Ld. counsel contends that bare perusal of the complaint would reveal that same was filed on misconceived suspicion and only for the reason that there was delay in filing the Income Tax Return. Ld. counsel contends that even ld. CJM, without applying judicious mind, passed summoning order dated 27.02.2017 (Annexure P5) and then framed the charges on 15.12.2022 (Annexure P6).

3.2 Ld. counsel contends further that in the meantime, petitioner had moved an application for settlement of the case against him before the Settlement Commission, which allowed his application and vide order dated 21.06.2018 *(Annexure P7)* granted immunity from prosecution to the petitioner. Despite the said immunity granted to the petitioner, the respondent-complainant is still continuing to prosecute the petitioner.

With these submissions, prayer is made for quashing the complaint, as no purpose shall be served by continuing the same, once the matter has been settled by the Settlement Commission.

4. Notice to the respondent-Assistant Commissioner of Income Tax, Ludhiana was issued. Despite due service of the notice, nobody turned up to represent the respondent or to contest the petition.

5. Annexure P3 would reveal that non-compliance of notice under Section 153A of the Act was alleged on part of the petitioner for the assessments year 2009-2010 to 2015-16. Complaint (Annexure P4) to prosecute the petitioner under Section 276CC of the Act has been filed for not filing the return for the assessment year 2013-14. Annexure P7 is the copy of the order dated 21.06.2018 passed by the Income Tax Settlement Commission under Section 245D(4) of the Act in respect of notice under Section 153A of the Act for Assessment years 2009-2010 to 2014-15; and also notice issued under Section 143(2) for the assessment year 2015-16. It is revealed from the order that matter was settled and immunity was granted to the petitioner from prosecution.

6. In ***Ashirvad Enterprises and others Vs. State of Bihar and another***, *2004(3) SCC 624,* there were allegations of tax evasion. Complaint under Section 276C of the Act was filed. However, on application moved before the Settlement Commission, the orders were passed according immunity from prosecution. Said order was passed before the institution of the proceedings for prosecution. The decision was not questioned by the Income Tax Authorities and attained finality. In these circumstances, Hon'ble Supreme Court quashed the proceedings. It will be relevant to reproduce the observations as made by Hon'ble Supreme Court, which reads as under: -

> "6. Section 245C of the Act deals with application of settlement of cases. As noted above no immunity can be granted by the Commission in cases where the proceedings for prosecution under the Act or under the Indian Penal Code, 1860 (in short 'the IPC') or under any Central Act for the time being in force have been instituted before the date of receipt of application under Section 245C after 1.6.1987. There is logic in the prohibition. It is intended to discourage filing of belated applications after prosecution is launched and also reasons envisaged in **CIT v. B.N. Bhattachargee (1979) ITR 461,** wherein it was observed that Section 245H is a magnet which attracts large tax-dodgers, and it was emphasised that power of

immunisation against criminal prosecution should be used in deserving cases. Whether grant of immunity is called for in a given case is to be decided by the Commission on the facts of each case and no straight-jacket formula for any universal application can be laid down. In the instant case, the Commission has been satisfied that grant of immunity is called for. Since that decision has not been questioned by the Income Tax Authorities, it has attained finality. Conditions required to be fulfilled before immunity can be granted are that the Commission has to be satisfied that the applicant (a) has made full and true disclosure of his income and the manner in which such income has been derived and (b) has co- operated with the Commission in the proceedings before it. In the instant case as the records reveal the application for settlement in terms of Section 245C was filed on 27.5.1991. The prosecution was launched on 27.2.1992. Obviously, therefore, application for settlement was filed before prosecution was launched. The order of the Commission refers to the immunity granted in the following terms:

> "IMMUNITY:
>
> In view of the full and true disclosure of his income made and the cooperation extended by the applicant in the settlement of his income tax liabilities, his prayer for immunity from penalty and prosecution under the I.T. Act and the corresponding provisions of the IPC in respect of the assessment years covered by the settlement period is granted."

7. Above being the position, the proceedings before the Special Court are quashed. However, at this stage, the apprehension of Mr. Agrawal, learned senior counsel for the respondent no.1 about consequences flowing from non- compliance with Commission's order needs to be taken note of. Sub-section (1A) of Section 245H deals with the consequences of non-compliance with the orders and sufficiently takes care of such apprehensions. In case, there is non-compliance of the Commission's order, provision of sub-section (1A) of Section 245H shall be operative and the appellants are rendered liable, notwithstanding the earlier immunity granted as if such immunity was not granted at all. It shall be open to the Income Tax Authorities to ask for restoration of proceedings before the Special Court if there is non- compliance with Commission's order or withdrawal of immunity in terms of Section 245H(2).

8. It may be noted here that High Court had declined to quash the proceedings on ground that proceedings were pending before the Commission. The view of the High Court is on terra firma. This Court in **P. Jayappan v. S.K. Perumal, First I.T.O. (1984) 149 ITR 696 (SC)** observed that merely because the application for settlement is pending before the Commission that cannot be a ground to quash the pending prosecution. But the position has changed in this case as after High Court's

judgment, final orders have been passed by the Commission according immunity on an application presented, apparently before the institution of the proceedings for prosecution.

7. In ***Mohan Lal Darshan Kumar and others*** *Vs.* ***S.P. Bookal Income Tax Officer and another,*** *1997(1) CLJ (Criminal) 87,* quashing under Section 482 CrPC was sought in respect of offence under Section 276(c)(1) of the Act besides Section 193, 467, 471, 34 IPC. The application of the petitioner under Section 245H of the Act was allowed by the Settlement Commission vide which the immunity from prosecution under the Act/IPC was granted. In these circumstances, this Court allowed the quashing of the complaint.

8. Both the aforesaid authorities are applicable to the facts of the present case. In the present case also, after filing of the complaint, but before framing of charge, the Settlement Commission has already granted immunity from prosecution to the petitioner. Therefore, continuation of the complaint will be gross misuse of the process of law.

9. As such, the complaint No.COMA/736/2017 (Annexure P4) titled as '*Assistant Commissioner of Income Tax Vs. Jasbir Singh Ryait'*, pending in the Court of ld. Chief Judicial Magistrate, Ludhiana, under Section 276CC of Income Tax Act, 1961, besides summoning order dated 27.02.2017 (Annexure P5); order dated 15.12.2022 (Annexure P6) framing charges against the petitioner and all the consequential proceedings arising from are hereby quashed..

Pending application(s), if any, stand disposed of.

(DEEPAK GUPTA)
JUDGE

05.04.2024
Vivek

Whether speaking/reasoned? *Yes*
Whether reportable? *Yes*

VIVEK PAHWA
2024.04.05 18:52
I attest to the accuracy and integrity of this document